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Date of Signature and Deposit: February 14, 2006

Jack M. Cook, Reg. No. 56,098

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	John Zahorjan, et al.
Serial No.:	09/633,507
Filed:	August 07, 2000
For:	**Method for Efficient, On-Demand Data Streaming**
Group Art Unit:	2776
Docket No.:	960296.97354
Examiner:	Srivastava, Vivek

TRANSMISSION OF APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant hereby submits an Appeal Brief in support of the Notice of Appeal filed December 16, 2005, following a final rejection in the above-listed patent application.

The $500.00 fee for filing an Appeal Brief by a large entity and any other fees arising as a result of this or any other communication, should be charged to Deposit Account No. 17-0055.

Respectfully submitted,

Dated: February 14, 2006

By: _____
Jack M. Cook
Registration No. 56,098
Quarles & Brady LLP
411 E. Wisconsin Avenue
Milwaukee, WI 53202-4497
(414) 277-5405

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APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant, John Zahorjan, et al., having filed a timely Notice of Appeal of a Final Action in the above-identified patent application, hereby submits this Appeal Brief in support of patentability.

I. REAL PARTY IN INTEREST

The present application is assigned to Wisconsin Alumni Research Foundation, 614 Walnut Street, Madison, WI, 53726, as evidenced by the assignment recorded at Reel/Frame No. 013960/0849..

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-19 are currently pending in the present patent application of which claims 9-16, 18, and 19 have been withdrawn as subject to restriction. Furthermore, claims 2-8 have been indicated as allowable and claim 17 has been allowed. Hence, this appeal is taken with respect

to only claim 1, which is set forth along with the other pending claims in Appendix A following hereafter.

IV. STATUS OF AMENDMENTS

No amendment has bee submitted by Appellant after the Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present application includes two independent claims, of which only claim 1 is the subject of this appeal as claims 2-8 have been indicated as allowable and claim 17 has been allowed. Claim 1 is directed at a method for transmitting program data having a designated playback rate to a customer requesting the program data. *See generally,* pg. 6, ll. 16-23. Specifically, the method includes scheduling a first transmission of a program 62 in response to a client request by a client 60, wherein the program has a playback rate and then selecting a target transmission that is farther along in the program as a merge target for the transmission, so that the transmission could merge with the target transmission absent a change in the target transmission 66. *See* Fig 5 and accompanying description: pg. 13, ll. 18-32 (*see also*, Figs. 4A-4C and accompanying description: pg. 11, l. 4 to pg. 13, l. 16 and pg. 14, l. 22 to pg. 16, l. 33). Additionally, the method includes receiving at the client a composite of the first transmission and data of the target transmission 94, 98, neither of which is time-distorted 98, 100, wherein a data rate of the composite is a non-integer multiple of the playback rate. Pg. 6, ll. 18-20 and *see* also Figs. 7 and accompanying description: pg. 14, ll. 22-34 and Figs. 5, 6, 8, and 9 and accompanying description: pg. 13, ll. 18-32; pg. 13, l. 33 to pg. 14, l. 21; pg. 15, ll. 1-33.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by an article cited by Appellant entitled "Reducing I/O Demand in Video-On-Demand Storage Servers," referred to hereinafter as the "Golubchik et al."

VII. ARGUMENT

Claim 1 was rejected under 35 U.S.C. 102(b) as being anticipated by Golubchik et al.

As addressed in the Response of December 13, 2004, Golubchik et al. discloses an approach to reducing the I/O demand on a storage server while increasing the number of user content requests which can be served simultaneously. *See* pg. 26, ¶2. In particular, Golubchik et

al. teaches a system and method referred to as "adaptive piggybacking," which Golubchik et al. defines as "a policy for ***altering display rates*** of requests in progress for the purpose of merging their respective I/O streams into a single stream." Pg. 26, ¶7 (emphasis added). In this regard, Golubchik et al. explicitly states that it teaches the ability to "dynamically *time compress* or *time expand*" video data delivered to a requesting client. Pg. 27, ¶3 (emphasis in original).

On the other hand, claim 1 calls for "receiving at a client a composite of the first transmission and data of the target transmission, ***neither of which is time-distorted***." (Emphasis added). As shown above, Golubchik et al. teaches a system and method of "altering display rates" by delivering data that includes time compression or time expansion and; thus, Golubchik et al. actually teaches that data transmissions ***are*** time-distorted. Therefore, Golubchik et al. does not teach or suggest data transmissions that are ***not*** time-distorted, as explicitly called for in claim 1.

The Office Action apparently recognized this distinction but did not accord such any patentable weight to these elements of claim 1 because the Office Action contended that "the claims fail to recite the meaning of time-distortion." Office Action of June 16, 2005, pg. 2, ¶2. In an effort to provide a basis for sustaining a rejection that can only be maintained if the elements "neither of which is time-distorted" are disregarded, the Office Action stated that the limitation was given no meaning because "the specification is read in light of the claims and limitations in the specification are not read into the claims." Advisory Action of September 1, 2005, Continuation Sheet.

While it is correct to state that limitations in the specification are not to be read into the claims, it is incorrect to state that the specification is read in light of the claims; rather, when necessary, the claims are to be read in light of the specification. *See* MPEP §2106(II)(C) *stating* "Limitations appearing in the specification but not recited in the claim are not read into the claim." *citing* E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) and "Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure." *citing* In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Furthermore, Appellant asserts that there is no basis for considering elements of a claim meaningless simply because there is not an express definition of the elements in the claims.

To the contrary, each and every element of the claims must be accorded the broadest reasonable meaning that is consistent with (1) the plain meaning that one of skill in the art would attribute the elements as used within the claims and/or (2) as described in the specification. *Id.* That is, Appellant believes that the rejection proffered in the Final Office Action and Advisory

Action is improper because "the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification." MPEP §2111.01 *citing In re* Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Therefore, under MPEP §2111.01 and the plethora of substantive case law on point, words or phrases need not be defined in the claims to be accorded patentable weight, as the Office Actions purport. Rather, words or phrases in the claims must be attributed their plain meaning as one of ordinary skill in the art would understand the word or phrase within the context of the claim or, if specifically defined in the specification, the words or phrases must be attributed the definition found in the specification. *See* MPEP §2111.01 and *Phillips v. AWH Corp.*, Fed. Cir., No. 03-1269, 7/12/05 (stating, only months ago, that the Federal Circuit has turned away from prior case law suggesting that dictionaries may be a better starting point for determining the "ordinary meaning" of claim elements in favor of interpreting the claim based on the written description and prosecution history.).

In the case at hand, Appellant believes that the meaning of "time-distorted" is clear (1) based on the plain meaning one of ordinary skill in the art would attribute the word within the context of the claim as well as (2) based on the use of "time-distorted" found in the specification. That is, one of ordinary skill in the art would interpret "time-distorted" as used in claim 1 to mean that the data transmission would not cause a playback rate that is altered from it original or normal rate. Put another way, the data is not altered to cause accelerated or decelerated (i.e. time-distorted) playback. Furthermore, the Specification clearly provides adequate context to understand the term, which is consistent with this plain meaning that one of skill would attribute to the claimed elements.

In fact, the Specification specifically distinguishes the present invention from conventional "piggybacking" techniques of the type disclosed by Golubchik et al., at least in part, based on the definition of "time-distorted" data. *See* pg. 3, l. 15 to pg. 4, l. 2. For instance, the Specification describes piggybacking as transmitting an *accelerated* (or *decelerated*) data stream at a rate higher (or lower) than the original data stream. *See* pg. 3, ll. 24-28. In the case of video files, this is achieved by configuring the data to adjust the display rate of the video files so that the video plays faster (or slower) than the original video play rate. *See* pg. 3, ll. 24-27 and Fig. 2. Accordingly, the Specification refers to the piggybacking technique, which employs accelerated time in client playback, as requiring "time-distorted" data. *See* pg 4, ll. 27-28. The Specification further recognizes that the time distortions associated with the accelerated (or decelerated) streams in a "piggybacking system may be unacceptable. *See* pg. 4, ll. 1-2. Therefore, the present invention provides a system that enables two streams to merge while, at

the same time, ensuring that neither stream is "time-distorted," as explained in detail in the Specification. *See* pg. 12, ll. 8-16; pg. 13; pg. 15, ll. 13-19; and pg. 16, ll. 1-4.

For at least these reasons, all of the elements of claim 1 and, in particular, the term "non-distorted," must be attributed patentable consideration. Accordingly, because Golubchik et al. fails to teach or suggest each element of claim 1, Appellant asserts that claim 1 is patentably distinct from the art of record and respectfully requests full and favorable consideration.

VIII. CONCLUSION

Golubchik et al. clearly teaches a system that requires time distortion. On the other hand, claim 1 calls for a method that is clearly distinguishable from the system disclosed by Golubchik et al. based, at least, upon the elements "neither of which is time-distorted."

Contrary to the position taken in the Office Actions, these elements must be properly considered, at least, because the meaning of "time-distorted" is clear (1) based on the plain meaning one of ordinary skill in the art would attribute the word within the context of the claim as well as (2) based on the use of "time-distorted" found in the specification. Once these elements of claim 1 are properly considered, the proffered basis of rejection cannot be sustained because Golubchik et al. cannot be said to teach or suggest the claimed method for transmitting program data that, in part, includes "receiving at a client a composite of the first transmission and data of the target transmission, ***neither of which is time-distorted***" with a system that relies upon "a policy for ***altering display rates*** of requests in progress for the purpose of merging their respective I/O streams into a single stream" in order to "dynamically *time compress* or *time expand*" video data delivered to a requesting client. Pg. 26, ¶¶ 3 and 7 (emphasis added).

In view of the above, Appellant requests reversal of the final rejection regarding claim 1 and a Notice of Allowance for claims 1-8 and 18.

Respectfully submitted,

Dated: February 17, 2006

By: _____

Jack M. Cook, Reg. No. 56,098
Quarles & Brady LLP
411 E. Wisconsin Avenue
Milwaukee, WI 53202-4497
(414) 277-5405

APPENDIX A
Claims of Patent Application No. 09/633,507

1. (Original)A method of transmitting program data having a playback rate comprising:

(a) scheduling a first transmission of a program in response to a client request by a client, wherein the program has a playback rate;

(b) selecting a target transmission that is farther along in the program as a merge target for the transmission, so that the transmission could merge with the target transmission absent a change in the target transmission; and

(c) receiving at the client a composite of the first transmission and data of the target transmission, neither of which is time-distorted, wherein a data rate of the composite is a non-integer multiple of the playback rate.

2. (Original) A method of transmitting a program data file on-demand, comprising:

(a) beginning a first transmission of the program data file in response to a first client request for the program data file at a first data file transmission rate;

(b) beginning a second transmission of the program data file in response to a second client request for the program data file;

(c) beginning a first patch data transmission in response to the second client request, wherein the patch data is transmitted at a patch data transmission rate slower than the transmission rate of the first transmission of the program data file; and

(d) discontinuing the second transmission and patch data transmission when the second client is capable of receiving the data file solely from the first transmission of the program data file.

3. (Original) The method as recited in claim 2, wherein the second transmission of the program data file is also transmitted at a second transmission rate, and wherein the patch data transmission rate is less than the second transmission rate.

4. (Original) The method as recited in claim 2, wherein the first data file transmission rate is equal to a playback rate.

5. (Original) The method as recited in claim 2, wherein the first patch data transmission transmits a first segment of data, further comprising discontinuing a portion of the first transmission of the program data file corresponding to the first segment of data.

6. (Original) The method as recited in claim 2, further comprising after step (c):

(e) beginning a third transmission of the program data file at a time of a third client request;

(f) beginning a second patch data transmission in response to the third client request; and

(g) discontinuing the third transmission and second patch data transmission when the third client is capable of operating from the first transmission of the program data file.

7. (Original) The method as recited in claim 6, wherein step (f) further comprises beginning the second patch data transmission after the first patch data transmission has been discontinued.

8. (Original) The method as recited in claim 7, wherein the second patch transmission transmits a second segment of data, further comprising discontinuing a portion of the first transmission of the program data corresponding to the second segment of data.

9. (Withdrawn) A method of receiving and playing a program data file on-demand subsequent to inception of a first transmission of the program data file, comprising:

(a) requesting a second transmission of the program data file;

(b) playing data from the second transmission of the program data file while recording a first patch data transmission;

(c) after step (b), playing the previous data from the first patch data transmission while recording data from the first transmission of the program data file; and

(d) after step (c), playing the previously recorded data from the first transmission of the program data file while recording real-time data from the first transmission of the program data file.

10. (Withdrawn) The method as recited in claim 9, further comprising:

(e) requesting a third transmission of the program data file;

(f) playing data from the third transmission of the program data file while recording data from the first patch data transmission;

(g) recording data from a second patch data transmission;

(h) playing the recorded data from step (g) while recording data from the first transmission of the program data file; and

(i) playing the recorded data from the first transmission of the program data file while recording real-time the data from the first transmission.

11. (Withdrawn) The method as recited in claim 10, wherein step (g) further comprises recording data from the second patch data transmission after termination of the second patch data transfer.

12. (Withdrawn) A method of receiving and playing a program data file on-demand subsequent to inception of a first transmission of the program data file, comprising:

(a) receiving and playing data from a second transmission of the program data file;

(b) playing a decreasing amounts of data from the second transmission of the program data file while at least one of recording and playing increasing amounts of data from the first transmission of the program data file; and

(c) after step (b), recording and playing only data from the first transmission of the program data file.

13. (Withdrawn) The method as recited in claim 12, wherein steps (b) and (c) further comprise allocating data from the first transmission of the program data file into a corresponding channels of memory, wherein each channel corresponds to a portion of a repeating iteration of data transmission.

14. (Withdrawn) The method as recited in claim 12, wherein step (b) further comprises allocating incrementally increasing channels to record the first transmission of the program data.

15. (Withdrawn) The method as recited in claim 14, further comprising playing data from the second transmission of the program data for corresponding to channels that have not yet stored data from the first transmission of program data.

16. (Withdrawn) The method as recited in claim 15, wherein step (c) further comprises playing the previously recorded data and replacing the previously recorded and played data with real-time data from the first transmission of program data.

17. (Original) A method of communication a program data file to multiple clients on-demand, the method comprising:

(a) beginning a first transmission of the program data file in response to a first client request for the program data file, wherein the program data file is broken up into a plurality of substreams;

(b) after step (a), beginning a second transmission of the program data file in response to a second client request for the program data file, wherein the second transmission includes a plurality of substreams corresponding to the plurality of substreams of the first transmission;

(c) receiving the first and second transmissions at the second client, wherein the second client receives increasing substreams of the first transmission and decreasing substreams of the second transmission; and

(d) discontinuing the second transmission when the second client is receiving exclusively the substreams of the first transmission.

18. (Withdrawn) A method of communicating a program data file on-demand, comprising:

(a) beginning a first transmission of the program data file in response to a first client request for the program data file, the first transmission having a first transmission rate;

(b) receiving a second client request for a second transmission of the program data file at a time subsequent to the first client request;

(c) in response to the second client request, beginning the second transmission of the program data file, wherein the second data transmission includes the first transmission rate in addition to an extra transmission having a second transmission rate;

(d) receiving the second transmission including playing data at the first transmission rate while storing the extra transmission; and

(e) discontinuing the second transmission when the second client is capable of receiving continuous data of the program data file solely from the first transmission of data.

19. (Withdrawn) The method as recited in claim 18, further comprising, after step (e), receiving data from the first transmission including playing stored data in addition to storing data from the first transmission.

APPENDIX B

EVIDENCE

There is no evidence, other than the documents cited in the final Office Action.

APPENDIX C

RELATED PROCEEDINGS

There are no decisions in related proceedings.